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C O N F I D E N T I A L SECTION 01 OF 03 ANKARA 000714

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TAGS: [PGOV](#) [PHUM](#) [PREL](#) [OSCE](#) [TU](#)
SUBJECT: TURKEY: RULING PARTY STILL WORKING OUT "ARTICLE
301" DIFFERENCES

REF: ANKARA 59

Classified By: Acting Political Counselor Kelly Degnan, reasons 1.4 (b)
,(d)

11. (C) Summary: As a bill to amend controversial Turkish Penal Code Article 301 (criminalizing insulting "Turkishness") inches its way toward the floor of Turkish Parliament, Turkey's ruling Justice and Development Party (AKP) members remain divided on the key issue of who should review cases to screen out baseless prosecutions. AKP members submitted a bill last week vesting the president with that authority, after months of delay and debate over the issue. Parliament Speaker Koksall Toptan and Justice Minister Mehmet Ali Sahin assert that presidential review would undermine the apolitical nature of the Presidency and place an unmanageable administrative burden on the office. They suggest giving the role to the Justice Minister. PM Erdogan, who prefers the president hold the authority, responded the Justice Minister would infuse a political dimension into a supposedly objective process. Justice Committee Chairman Ahmet Iyimaya is pushing a compromise -- placing review authority in the Speaker's office. Meanwhile, opposition party leaders are mounting an aggressive media campaign that questions the patriotic bona fides of anyone attempting to change Article 301. Amending 301 is a key part of AKP's revitalized EU reform package. Erdogan's challenge is to unify his party around a practical compromise that can withstand divisive opposition tactics and move this long-delayed legislation forward. End summary.

Speaker Moves Amended Article 301 Forward

12. (SBU) Speaker Toptan moved a bill amending Article 301 to the Justice Committee on April 14. The main changes include changing "insulting Turkishness" to "explicitly insulting the Turkish nation, the State or the Government of the Republic of Turkey, the Parliament, the Judiciary, the Military or the Security organization of the State." The bill reduces the maximum penalty from three years to two years imprisonment and eliminates the provision increasing punishment if the crime is committed abroad. The AKP-introduced bill makes Article 301 prosecutions subject to the authorization of the president. The Justice Committee is reviewing the draft, and will send a revised version to the floor next week.

Divisions Remain Within AKP

13. (SBU) The debate over who should have screening authority that has divided AKP and delayed introduction of a bill for months resurfaced with the bill's introduction. Iyimaya explained that a screening mechanism is critical to reign in ultra-nationalist lawyers who have been the driving force behind Article 301 cases. According to recently released MOJ statistics, over the past five years prosecutors opened 6075 cases under Article 301 (and its precursor Article 159) that led to 745 convictions, he noted.

14. (U) Justice Minister Sahin consistently has argued that the MOJ should be vested with screening authority. Speaker Toptan gave tacit support to Sahin's view when he recently told reporters that authorizing the president would put the apolitical Presidency in a difficult position. Though Turkish press speculates President Gul agrees, Gul has avoided speaking publicly on the issue, saying only, "the decision is up to Parliament." PM Erdogan responded that the Justice Minister, as a political figure, is ill-suited for screening duty, noting AKP decided to give the president review authority after lengthy discussion at several group meetings.

15. (SBU) Iyimaya told us he plans to push the compromise solution of vesting the authority in the Speaker's office. He has consistently maintained that the Speaker is best positioned for this duty. AKP Vice Chairman Dengir Mir Firat echoed the need to reach a compromise when he told reporters April 11 that AKP would amend the bill if the opposition parties agreed to give the authority to the Justice Minister.

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Opposition Parties Remain Firmly Opposed

16. (U) Nationalist Action Party (MHP) and Republican Peoples' Party (CHP) members remain firmly opposed to any changes to Article 301. MHP leader Devlet Bahceli accused AKP of amending 301 as part of its strategy to gain EU support to bolster its precarious political situation in the face of the closure case pending against it. Amending Article 301 revealed AKP as politically bankrupt, Bahceli said. MHP Deputy Group Chairman Oktay Vural told reporters AKP's bill seeks to give the president authority to allow citizens to insult the Turkish nation. CHP Deputy Group Chairman Hakki Suha Okay said the amendment would violate the Constitution by requiring the President to interfere with the judiciary.

17. (U) MHP has started an active campaign against amending Article 301 -- distributing leaflets, starting an Internet website, advertising on billboards and launching a website called "Who is Disturbed?" -- www.kimrahatsiz.com. The site contains a series of doomsday videos. One shows footage of the graves of fallen Turks to the strains of a famous patriotic song. Bahceli's voice declares, "We are a big family with a single heart. We are Turkey." Another video criticizes "lobbyists, accomplices, and so-called intellectuals," and states, "Wake up Turkey because now is the time to be unified."

18. (U) Pro-Kurdish Democratic Society Party (DTP) members continue to favor abolishing Article 301 entirely. At DTP's most recent parliamentary group meeting, Group Chairman Ahmet Turk called AKP's bill "an attempt to deceive the EU." Turk said DTP would rather "abolish this article as a whole since it led to the murder of Hrant Dink."

Lawyers, Academics Criticize Current Draft

19. (U) Lawyers and academics have focused their criticism on the screening provision. Istanbul University law professor Adem Sozuer reiterated the argument of many that the problem

rests with the interpretation rather than language of Article 301. "Whether the President allows a case to proceed or not, Turkey will be shaken. The most appropriate method is for prosecutors to get it right," he said. He added that such a system would place an undue administrative burden on Turkey's top official. Galatasaray University's Law Professor Umit Kocasakal said he prefers a French-style method that would allow the allegedly insulted institution to decide whether a case should be opened. Ankara University Professor Baskin Oran argued in a recent column that AKP was attempting to redirect criticisms to the Presidency to evade a backlash from nationalists and appease civil society. He called on AKP to abolish Article 301.

Journalists Skeptical of Proposed Changes

¶10. (C) Some journalists prosecuted under Article 301 see AKP's proposed changes as cosmetic. "Turkish Daily News" columnist Burak Bekdil, sentenced to a fine and five years' probation for labeling the judiciary corrupt, told us changing "insulting Turkishness" to "explicitly insulting the Turkish nation" would still leave room for "ad hoc prosecutions." Reducing the maximum penalty is meaningless because courts always reduce sentences to a fine and probation in 301 cases -- an effective mechanism that allows the government to stifle speech without imposing jail sentences. Bekdil said allowing the president to screen cases would be an unconstitutional interference in judicial matters, would create a conflict of interest if a defendant allegedly insulted the president, and would not allow defendants the opportunity to defend themselves and clear their names.

¶11. (C) "Today's Zaman's" Lale Sariibrahimoglu, recently acquitted of violating Article 301 by allegedly "insulting" the military, predicted the proposed changes would not end persecution and suppression of free speech because numerous other offending articles will remain on the books.

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¶12. (C) Comment: After months of promises and delays, AKP took the first step towards reforming one of Turkey's most controversial laws, spurred in part by pressure from EU members and the pending closure case. Amending 301 is a key part of Erdogan's revitalized EU reform effort but the continuing divide within AKP, opposition party heat, and public apathy, indicate just how difficult changing this law will be. Erdogan's challenge -- one he has clearly not yet accomplished -- is to unify his party around a practical compromise that can withstand divisive opposition tactics and move the long-delayed legislation forward. End comment.

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